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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF WASHINGTON
(Department of Transportation)

Defendant.

CIVIL ACTION NO. C86-63M

SUPPLEMENTAL COMPLAINT

The United States of America ("Plaintiff"), by and through its undersigned attorneys, by the authority of the Attorney General of the United States, and at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), alleges that:

INTRODUCTION

1. This is a civil action for violations of the Clean Air Act, 42 U.S.C. § 7401, et seq., and EPA regulations promulgated thereunder concerning asbestos emissions by defendant, the

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1 State of Washington (Department of Transportation), in connection
2 with the renovation of the Colman Ferry Terminal, Pier 52, Seattle,
3 Washington and in connection with the removal of pipe from beneath
4 the Puyallup River Bridge, East 11th Street and Milwaukee Way,
5 Tacoma, Washington.

6 2. Plaintiff seeks to enjoin defendant from further
7 violating the National Emission Standard for Hazardous Air
8 Pollutants ("NESHAP") for asbestos promulgated by EPA under
9 Section 112 of the Clean Air Act, 42 U.S.C. § 7412, 40 C.F.R.
10 Part 61. Plaintiff also seeks the assessment of civil penalties
11 for defendant's violations of these regulations and its costs and
12 fees in this action.

13 JURISDICTION AND PARTIES

14 3. This Court has jurisdiction over the subject matter
15 of this action under Section 113(b) of the Clean Air Act, 42
16 U.S.C. § 7413(b) and under 28 U.S.C. §§ 1331, 1345, and 1355.

17 4. Notice of the commencement of this action has been
18 given to the State of Washington as required by 42 U.S.C. § 7413(b).

19 5. Venue is proper in this District under Section 113(b)
20 of the Clean Air Act, 42 U.S.C. § 7413(b), and under 28 U.S.C.
21 § 1391(c) as the place in which the violations occurred.

22 6. Defendant State of Washington is a sovereign state.
23 Defendant owns and operates, through its agency the Department of
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1 Transportation, a facility known as the Colman Ferry Terminal,
2 located at Pier 52 in Seattle, Washington as well as a bridge,
3 known as the Puyallup River Bridge, located at East 11th Street
4 and Milwaukee Way, Tacoma, Washington. The Colman Ferry Terminal
5 and the Puyallup River Bridge are the facilities at which the
6 Defendant performed the renovation projects which are the subjects
7 of this litigation. Defendant, State of Washington, is a "person"
8 as defined by 42 U.S.C. § 7602(e), within the meaning of 42 U.S.C.
9 § 7613(b).

10 THE ASBESTOS NESHAP

11 7. Section 112 of the Clean Air Act, 42 U.S.C. § 7412,
12 authorizes the Administrator of EPA to publish a list of air
13 pollutants determined to be hazardous and to prescribe emission
14 standards for those pollutants. These standards are known as
15 National Emission Standards for Hazardous Air Pollutants
16 ("NESHAP").

17 8. EPA listed asbestos as a hazardous air pollutant
18 under the authority of Section 112 of the Act, 42 U.S.C.
19 § 7412(b), and also adopted an asbestos NESHAP that is codified
20 at 40 C.F.R. Part 61, subpart M.

21 9. Section 112(c) of the Clean Air Act, 42 U.S.C.
22 § 7412(c), prohibits the emission of any air pollutant to which
23 a NESHAP applies, from any stationary source, in violation of
24 such NESHAP. Noncompliance with a NESHAP is a violation of
25 Section 112(c) of the Act.

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1 10. 40 C.F.R. § 61.02 defines "owner or operator" as
2 "any person who owns, leases, operates, controls or supervises
3 a stationary source."

4 11. 40 C.F.R. § 61.02 defines "stationary source" as
5 "any building, structure, facility, or installation which emits
6 or may emit any air pollutant which has been designated as
7 hazardous by the Administrator."

8 12. 40 C.F.R. § 61.141 defines "friable asbestos
9 material" as "any material that contains more than 1 percent
10 asbestos by weight and that hand pressure can crumble, pulverize,
11 or reduce to powder when dry."

12 13. 40 C.F.R. § 61.141 defines "demolition" as "the
13 wrecking or taking out of any load-supporting structural member
14 of a facility together with any related handling operations."
15 The same section also defines "renovation" as "altering in any
16 way one or more facility components"

17 14. 40 C.F.R. § 61.141 defines "particulate asbestos
18 material" as "finely divided particles of asbestos material."
19 That same section also defines "asbestos material" as "asbestos
20 or any material containing asbestos."

21 15. 40 C.F.R. § 61.145(a) states that 40 C.F.R.
22 §§ 61.146 and 61.147 apply, with exceptions not relevant to
23 this action, to each owner or operator of a demolition or
24 renovation operation if the amount of friable asbestos material
25

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1 in a facility being demolished or renovated is at least 80
2 linear meters (260 linear feet) on pipes or at least 15
3 square meters (160 square feet) on other facility components.

4 16. 40 C.F.R. § 61.146 requires each owner or operator
5 of a demolition or renovation operation where there is the
6 regulated amount of asbestos to provide the Administrator of
7 EPA or his authorized representative with written notification of
8 intention to demolish or renovate, setting forth specified infor-
9 mation, prior to the commencement of the operation.

10 17. 40 C.F.R. § 61.147, in relevant part, requires
11 each owner or operator to comply with certain work practices
12 to prevent emission of particulate asbestos material to the
13 outside air.

14 18. 40 C.F.R. § 61.152(b) requires each owner or
15 operator to "discharge no visible emissions to the outside
16 air during the collection, processing (including incineration),
17 packaging, transporting or deposition of any asbestos-containing
18 waste material generated by the source"

19 THE NESHAPs VIOLATIONS

20 19. On or about or prior to February 20, 1985, defendant
21 engaged in demolition activities or renovation activities or both
22 within the definition of the NESHAP regulations, 40 C.F.R. § 61.141,
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1 at the Colman Dock Ferry Terminal ("the Colman Dock facility")
2 located at Pier 52, in Seattle, Washington. Said activities
3 involved the removal or stripping or both of friable asbestos
4 material as defined in 40 C.F.R. § 61.141.

5 20. On or about June 25, 1986, defendant engaged in
6 demolition activities or renovation activities or both within
7 the definition of the NESHAP regulations, 40 C.F.R. § 61.141
8 at the Puyallup River Bridge ("the Puyallup facility") located
9 at East 11th Street and Milwaukee Way, Tacoma, Washington.
10 Said activities involved the removal or stripping or both of
11 friable asbestos material as defined in 40 C.F.R. § 61.141.

12 21. The demolition or renovation operations at
13 the Colman Dock Ferry Terminal and at the Puyallup River Bridge
14 involved the removal or stripping of quantities of friable asbestos
15 material in excess of 160 square feet or in excess of 260 linear
16 feet at the facility and therefore the operation came under the
17 NESHAP regulations, 40 C.F.R. § 61.145(a).

18 22. The State of Washington is liable because it owns
19 the facilities in question and because it operated the renovation
20 operations in question.

21 FIRST CLAIM FOR RELIEF

22 23. Paragraphs 1 through 19 and 21 and 22 are incorporated
23 herein by reference as if fully alleged below.

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1 24. Defendant failed to provide prior written notice
2 of intention to renovate or demolish at the Colman Dock facility
3 in violation of 40 C.F.R. § 61.146 and Sections 112(c) and
4 114(a)(1)(B) of the Clean Air Act, 42 U.S.C. § 7412(c) and
5 § 7414(a)(1)(B).

6 SECOND CLAIM FOR RELIEF

7 25. Paragraphs 1 through 19, 21 and 22 are incorporated
8 herein by reference as if fully alleged below.

9 26. On or about or prior to February 20, 1985, defendant
10 removed friable asbestos materials from the Colman Dock facility
11 by drilling a series of holes in the ceiling of the car deck.

12 27. This removal was performed in violation of the work
13 practices set forth at 40 C.F.R. § 61.147, because defendant failed
14 to keep the friable asbestos materials adequately wetted. Defend-
15 ant's actions constitute a violation of 40 C.F.R. § 61.147 and
16 Section 112(c) and (e) of the Clean Air Act, 42 U.S.C. § 7412(c)
17 and (e).

18 THIRD CLAIM FOR RELIEF

19 28. Paragraphs 1 through 19 and 21 and 22 are incorporated
20 herein by reference as if fully alleged below.

21 29. Defendant did not ensure that the friable asbestos
22 material removed by drilling at the Colman Dock facility remained
23

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1 wet until collected for disposal in violation of 40 C.F.R.
2 § 61.147(e) and Section 112(c) and (e) of the Clean Air Act, 42
3 U.S.C. 7412(c) and (e).

4 FOURTH CLAIM FOR RELIEF

5 30. Paragraphs 1 through 19 and 21 and 22 are incorporated
6 herein by reference as if fully alleged below.

7 31. On information and belief, defendant discharged
8 visible emissions to the outside air during the collection,
9 processing, packaging, transporting, or deposition of asbestos-
10 containing waste material generated at the Colman Dock facility.
11 The defendant failed to use one of the disposal methods specified
12 in 40 C.F.R. § 152(b) (1), (2), or (3), thereby violating 40
13 C.F.R. § 152(b) and Section 112(c) and (e) of the Act, 42 U.S.C.
14 § 7412(c) and (e).

15 FIFTH CLAIM FOR RELIEF

16 32. Paragraphs 1 through 18 and 20 through 22 are
17 incorporated herein by reference as if fully alleged below.

18 33. Defendant failed to provide prior written notice
19 of intention to renovate or demolish at the Puyallup bridge
20 facility in violation of 40 C.F.R. § 61.146 and Sections 112(c)
21 and 114(a)(1)(B) of the Clean Air Act, 42 U.S.C. § 7412(c)
22 and § 7414(a)(1)(B).

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1 40. On information and belief, defendant discharged
2 visible emissions to the outside air during the collection,
3 processing packaging, transporting, or deposition of asbestos-
4 containing waste material generated at the Puyallup Bridge
5 facility. The defendant failed to use one of the disposal methods
6 specified in 40 C.F.R. § 152(b) (1), (2), or (3), thereby violating
7 40 C.F.R. § 152(b) and Section 112(c) and (e) of the Act, 42 U.S.C.
8 § 7412(c) and (e).

9 NINTH CLAIM FOR RELIEF

10 41. Paragraphs 1 through 18 and 20 through 22 are
11 incorporated herein by reference as if fully alleged below.

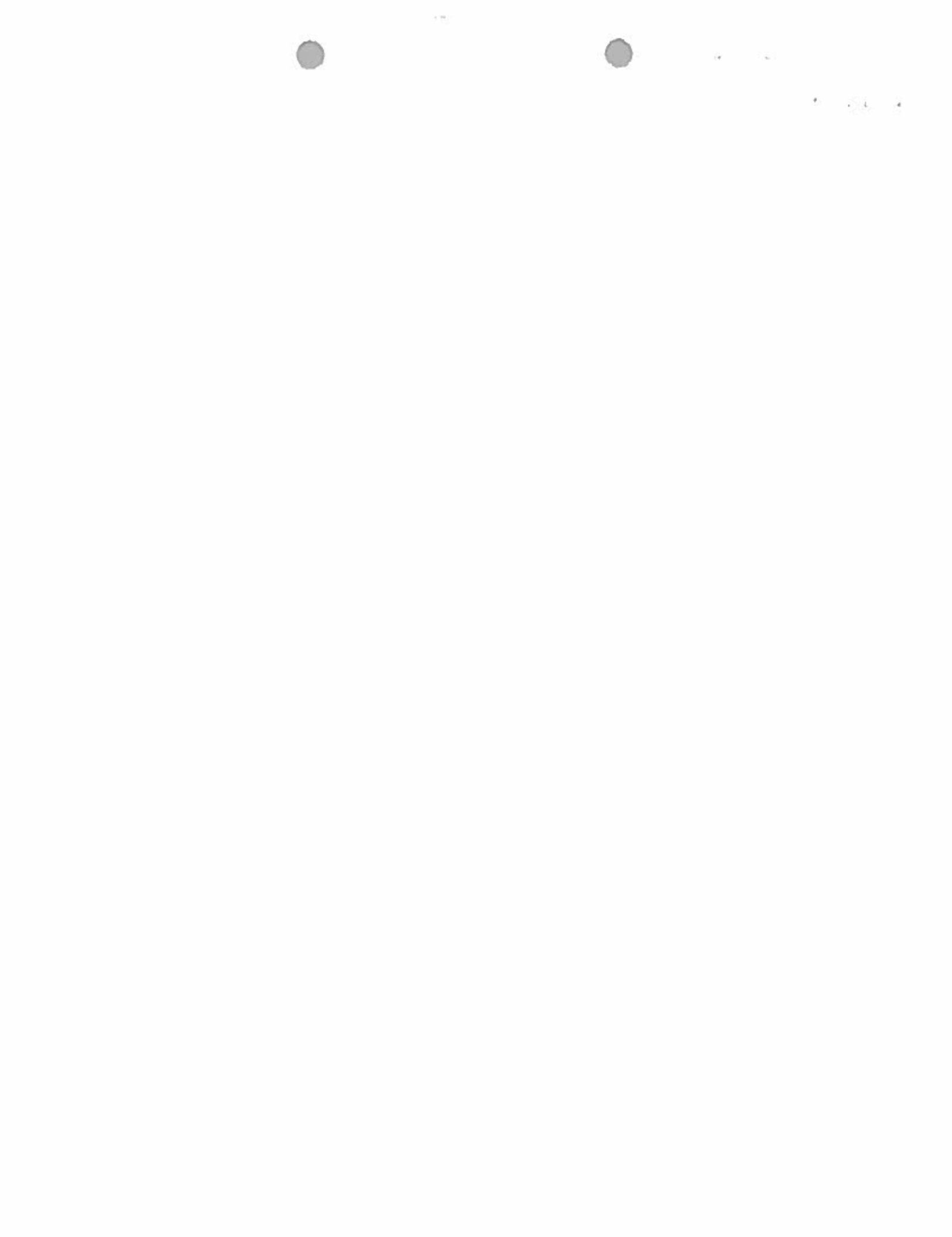
12 42. In conjunction with the removal of pipe from
13 the Puyallup Bridge facility defendant deposited asbestos-
14 containing material at one or more sites not operated in accordance
15 with the provisions of 40 C.F.R. § 61.156. Such action by the
16 defendant violated 40 C.F.R. § 152(a), and Section 112(c) and
17 (e) of the Act, 42 U.S.C. § 7412(c) and (e).

18 RELIEF REQUESTED

19 43. Section 113(b) of the Clean Air Act, 42 U.S.C.
20 § 7413(b) authorizes the Administrator of EPA to commence a
21 civil action for injunctive relief, or for the assessment of a
22 civil penalty of not more than \$25,000 per day of violation,
23 or for both whenever any person violates Section 112(c) or (e),
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1 or Section 114(a)(1)(B) of the Clean Air Act, 42 U.S.C. § 7412(c),
2 (e), and § 7414(a)(1)(B) by violating a NESHAP.

3 44. Unless restrained by an Order of this Court,
4 defendant may continue to violate the Clean Air Act, 42 U.S.C.
5 § 7401, et seq., and the asbestos NESHAP, 40 C.F.R. Part 61,
6 subpart M.

7 45. Defendant is liable for both equitable relief
8 and for the assessment of civil penalties under Section 113(b)
9 of the Clear Air Act, 42 U.S.C. § 7413(b) for the violations
10 alleged above.

11 WHEREFORE, plaintiff, United States of America,
12 respectfully prays that this Court:

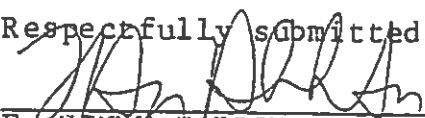
13 a. Permanently enjoin the defendant from further
14 violations of the Clean Air Act and the asbestos NESHAP, 40
15 C.F.R. Part 61;

16 b. Assess civil penalties of \$25,000 for each day of
17 each violation of EPA's regulations and the Clean Air Act;

18 c. Award plaintiff its costs and disbursements in
19 this action; and

20 d. Grant such other and further relief as this Court
21 may deem just and proper.

22 Respectfully submitted,

23 
24 F. HENRY HABICHT II
25 Assistant Attorney General
U.S. Department of Justice

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